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## PETITION OF RIGHT.

IN THE EXCHEQUER COURT OF CANADA.

*To the Queen's Most Excellent Majesty:*

COUNTY OF CARLETON, }  
TO WIT: }

THE Humble Petition of Lucy McQueen, of the City of Montreal, in the  
Dominion of Canada, Spinster,—

SHEWETH AS FOLLOWS:—

1. By Letters Patent dated the 20th day of May, 1801, under the Great Seal of the late Province of Upper Canada, and the hand of Peter Hunter, Esquire, Lieutenant-Governor of the same Province, His late Majesty King George the Third granted unto Grace McQueen, of the Township of Edwardsburgh, in the County of Grenville, in the District of Johnstown, in the said Province, Daughter of Captain Thomas Frazer, her heirs and assigns forever, All that parcel or tract of land situate in the Township of Nepean, in the County of Carleton, in the District of Johnstown, in the said Province, containing by admeasurement 400  
10 acres, more or less, being lots lettered E and D in the concession called C, in the said Township of Nepean, together with all the woods and waters thereon, under the reservations, limitations and conditions thereafter expressed, which said 400 acres of land were butted and bounded or might be otherwise known as follows: that is to say, Commencing where a post had been planted in front of the said concession, at the south-east angle of each of the said lots respectively; then north, 16 degrees west, 20 chains; then south, 66 degrees west, 100 chains; then south, 16 degrees east, 20 chains; then north, 66 degrees east, 100 chains to the place of beginning of each lot: to hold the said parcel or  
20 tract of land unto the said Grace McQueen, her heirs and assigns forever, saving, nevertheless, to the Crown, all mines of gold and silver that should or might thereafter be found on any part of the said land, and all white pine trees that should or might then or thereafter grow or be

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growing on any part thereof. The said Letters Patent reciting that the Crown had caused an allotment or appropriation of 57½ acres to be made in lot lettered N, broken concession A, of the same Township of Nepean; as by the said Letters Patent, now ready to be produced, will more fully appear.

2. By Letters Patent dated the 10th day of June, 1801, under the hand of the said Peter Hunter, and the Great Seal of the said late Province of Upper Canada, His late Majesty King George the Third also granted unto the said Grace McQueen, her heirs and assigns forever, all  
 10 that parcel or tract of land situate in the Township of Nepean, in the County of Carleton, in the District of Johnstown, in the said Province, containing by admeasurement 200 acres, more or less, being the lots D and E in the broken concession D on the River Rideau, together with all the woods and waters thereon lying and being, under the reservations, limitations and conditions thereafter expressed, which said 200 acres were butted and bounded, or might be otherwise known, as follows: that is to say, Commencing where a post had been planted on the west bank of the River Rideau, in the limit between lots E and F; then south, 66 degrees west, 55 chains more or less, to the front of the broken concess-  
 20 sion C; then north, 16 degrees west, 40 chains; then north, 66 degrees east, to the River Rideau; then southwardly along the bank of the river against the stream to the place of beginning; to hold the said parcel or tract of land unto the said Grace McQueen, her heirs and assigns forever; saving, nevertheless, to the Crown all mines of gold, silver, copper, tin, lead, iron and coal, and all white pine trees that should or might then or thereafter be growing on any part of the said land; the said Letters Patent reciting that the Crown had caused an allotment or appropriation of 28½ acres, to be made in lot N, broken front concession A, in the Township of Nepean, for the maintenance of a Protestant clergy, as by the  
 30 said Letters Patent ready to be produced, will more fully appear.

3. Both of the before stated Letters Patent were, shortly after the days on which they respectively bear date, duly registered as required by the law of the said late Province of Upper Canada, and the said Grace McQueen entered into possession of the land thereby granted to her as before stated, and save as hereafter appears continued in possession of all the said land down to the time of her death.

4. By an Act of the Provincial Parliament of the said late Province of Upper Canada, (8 Geo. IV., c. 1), passed on the 17th day of February, 1827, commonly referred to as the Rideau Canal Act, and intitled, "An  
 0 Act to confer upon His Majesty certain powers and authorities necessary to the making, maintaining, and using the canal intended to be completed under His Majesty's direction, for connecting the waters of Lake Ontario with the River Ottawa, and for other purposes therein men-

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tioned," and such Act so far as it is material for the purposes of this petition to state the same, after reciting "That His Majesty has been most graciously pleased to direct measures to be immediately taken under the superintendence of the proper military department, for constructing a canal uniting the waters of Lake Ontario with the River Ottawa, and affording a convenient navigation for the transport of naval and military stores. And that such a canal when completed will tend most essentially to the security of this Province, by facilitating measures for its defences, and will also greatly promote its agricultural and commercial interests, and it is therefore expedient to provide by law any necessary facility towards the prosecution of so desirable a work, " It was therefore thereby enacted by the authority of the same, that the officer employed by His Majesty to superintend the said work should have full power and authority to explore the country lying between Lake Ontario, or the waters leading therefrom, and the River Ottawa, and to set out and ascertain such parts of the lands belonging to any person in the route of the said canal as he should think necessary and proper for making the said canal, locks, and all such other works, improvements, matters and conveniences, as he should think proper and necessary for making, effect-  
 10 ing, preserving, improving, completing, and using in the said navigation and also, to construct, make and do all other matters and things which he shall think necessary and convenient for the making, effecting, preserving, improving, completing and using the said canal, in pursuance and within the true meaning of the said Act, doing as little damage as may be in the execution of the several powers to him hereby granted."

5. And it was further enacted by the authority aforesaid that after any lands or grounds should be set out and ascertained to be necessary for making and completing the said canal, and its other purposes and conveniences mentioned, the superintending officer aforesaid was em-  
 30 powered to contract, compound, compromise and agree with all persons, for themselves or their heirs and successors, and for those whom they represented, who should occupy, be possessed of or interested in any lands or grounds which should be set out or ascertained as aforesaid, for the absolute surrender to His Majesty, his heirs and successors, of so much of the said land as should be required for, or for the damages which he, she or they might reasonably claim in consequence of, the said intended canal, locks and other constructions and erections being cut and constructed in and upon his, her and their respective lands, and that all such contracts, agreements and surrenders should be valid and effectual in law, to  
 40 all intents and purposes,

6 And further it was enacted that such parts and portions of land covered with water so ascertained to be necessary to be occupied for the purposes of the said canal; and also such parts and portions as should upon

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any alteration or deviation from the line originally laid out for the canal should be ascertained and set out as necessary for canal purposes should be vested in His Majesty, his heirs and successors.

7. The said act then provides that if before the completion of the canal through the lands of any person or persons no voluntary agreement should have been made as to the amount of compensation to be paid for damages according to this Act, an arbitration therefor was to be had, and in case of dissatisfaction by either party with the award, then the said amount was to be settled by a jury: the act giving directions for the formation and operation of the jury, and for making their estimate, and for other proceedings connected therewith.

8. Lieutenant-Colonel John By, of the Royal Engineers, was the officer employed by His Majesty to superintend the work of making the said Rideau Canal, and he set out and ascertained certain part of the said parcels or tracts of land comprised in the said two several hereinbefore stated Letters Patent and Deeds of Grant respectively, as aforesaid, amounting altogether to 110 acres or thereabouts, as necessary for making and completing the said canal and other purposes and conveniences mentioned in the before stated Act, and were forthwith taken possession of by His then Majesty for the said canal purposes, and since retained in possession by His said Majesty, His heirs and Successors; and the land which he so set out and ascertained, as aforesaid, was described on a certain plan signed by him and lodged by him in the office of the Surveyor-General of the said late Province of Upper Canada, and now filed in the office of Her Majesty's Crown Land Department for the Province of Ontario.

9. Sometime after the passing of the said Act, the said Grace McQueen died intestate, being at the time of her death possessed of the said parcels or tracts of land comprised in the said two several hereinbefore stated Deeds of Grant respectively, or of so much thereof as had not been set out and ascertained for the purposes of the said canal as before mentioned; and she left Alexander McQueen, of Edwardsburg, in the District of Johnstown and Province of Upper Canada aforesaid, Esquire, her husband, and William McQueen, of the same place, Esquire, her eldest son and heir at law, respectively, her surviving. And on the 31st day of January, 1832, the said Alexander McQueen, by a certain deed poll in writing of that date, under his hand and seal, and which was afterwards duly registered in the proper register office of the said Province, for the consideration therein mentioned released unto the said William McQueen all his right and interest to and in the said parcels or tracts of land, to hold the same unto and to the sole and proper use and behoof of the said William McQueen, his heirs and assigns forever.



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10. The Rideau Canal was completed and opened for traffic throughout its entire length some time in the month of May, 1832.

11. By Act passed on the 9th day of December, 1843, (7 Vic., c. 11) of the Provincial Parliament of Canada, which Act is commonly referred to as "The Ordnance Vesting Act," and is intituled, "An Act for vesting in the principal officers of Her Majesty's Ordnance the estates and property therein described, for granting certain powers to the said officers, and for other purposes therein mentioned," and thereby the lands and other real property therein mentioned or referred to, including the  
10 said Rideau Canal and the lands and works belonging thereto, were vested in the Principal Officers of Her Majesty's Ordnance in Great Britain and their successors in the said office, subject to the provisions of the said "Ordnance Vesting Act," and in trust for the service of the said department, and it is hereby provided and enacted (see 29) as follows (that is to say) :—

"Provided always, and be it enacted, that all lands taken from "private owners at Bytown under the authority of the Rideau Canal Act, "for the uses of the canal which have not been used for that purpose, be "restored to the party or parties from whom the same were taken."

20 12. Your Suppliant alleges, that on or about the 20th day of October, 1845, the said William McQueen hereinbefore mentioned, to wit, the son and heir at law of the said Grace McQueen intestate, also died intestate, leaving your Suppliant his only legal issue and his sole heir at law, him surviving, and thereby entitled to have as owner thereof all the estate and interest whatsoever of the said Grace McQueen and William McQueen, both or either of them in and to the part or portion of the said 110 acres of the said granted lands so set out and ascertained for the purposes of the said canal, but not used therefor, including  
30 any right which she or he had or might have to a restoration and reinvestment of the said part or portion of the said 110 acres set out as aforesaid, which were not actually used for the purpose as aforesaid.

13. No payment, indemnity or compensation was ever made to the said Grace McQueen, nor to your Suppliant, nor to any person entitled to receive the same, in respect of the said part or portion of the said 110 acres so set out as necessary for the canal purposes as before stated, but not used as mentioned for the said purposes of the said canal.

14. And your Suppliant further alleges that the real property adjoining to the lots and parcels of land granted as mentioned to the said  
40 Grace McQueen formerly belonging to one Nicholas Sparks. A portion of this was set out and ascertained as necessary for the purpose of the said canal, and was accordingly taken from the said Nicholas Sparks,

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under the authority of the said Rideau Canal Act. After the passing of the said Ordinance Vesting Act, the said Nicholas Sparks applied for a restoration of part of the land so taken from him, and thereupon was passed an Act of the Provincial Parliament of Canada (9th Vic., C. 42), 1846, intituled "An Act to explain a certain provision of the Ordinance Vesting Act, and to remove certain difficulties which have occurred in carrying the said provision into effect." And such Act, so far as it is necessary for the purposes of this petition to state the same, is in terms as follows, that is to say:—

- 10     15. "Whereas, the 29th section of the Act passed in the 7th year of  
 "Her Majesty's reign, intituled 'An Act for vesting in the principal offi-  
 "cers of Her Majesty's Ordinance, the estates and property therein de-  
 "scribed, for granting certain powers to the said officers and for other  
 "other purposes therein mentioned, contains a proviso in the words fol-  
 "lowing: 'Provided always and be it enacted that all lands taken from  
 "private owners at Bytown, under the authority of the Rideau Canal  
 "Act, for the uses of the canal, which have not been used for that pur-  
 "pose, be restored to the party or parties from whom the same were taken;  
 "and doubts have arisen as to the true intent and meaning of the same, and  
 20 "as to the land to which it is intended to apply, and proceedings at law and  
 "in equity, which have arisen out of such doubts, have been commenced  
 "and are still pending. And whereas, during the now last session of the  
 "Legislature a bill was passed by the Legislative Council and Legislative  
 "Assembly of this Province, for the purpose of explaining and amending  
 "the said Act as far as regards the effect of the said proviso, and of set-  
 "ting such doubts at rest, but the said bill being reserved for the signifi-  
 "cation of Her Majesty's pleasure thereon, has not received the Royal  
 "assent. And whereas, as well the principal officers of Her Majesty's  
 "Ordinance as the private parties interested, are desirous that the doubts  
 30 "aforesaid should be removed, and all matters of difference between them  
 "should be fairly and amicably settled: Be it therefore enacted by the  
 "Queen's Most Excellent Majesty, by and with the advice and consent of  
 "the Legislative Council and of the Legislative Assembly of the Pro-  
 "vince of Canada, constituted and assembled by virtue of and under the  
 "authority of an Act passed in the Parliament of the United Kingdom  
 "of Great Britain and Ireland, and intituled an Act to re-unite the Pro-  
 "vinces of Upper and Lower Canada, and for the Government of Canada;  
 "and it is hereby enacted by the authority of the same that the proviso  
 "recited in the preamble to this Act shall be construed to apply to all the  
 40 "land at Bytown set out and ascertained and taken from Nicholas Sparks,  
 "of the said town, Esquire, under the provision of the Act of the Legis-  
 "lature of Upper Canada passed in the eighth year of the reign of King  
 "George IV., intituled An Act to confer upon His Majesty certain  
 "powers and authorities necessary to the making, maintaining and using

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" the canal intended to be completed under His Majesty's direction, for  
 " connecting the waters of Lake Ontario with the River Ottawa, and for  
 " other purposes therein mentioned, except so much thereof as is actually  
 " occupied by the site of the Rideau Canal as originally excavated at the  
 " Sapper's Bridge, and of the basin and By Wash, as they stood at the  
 " passing of the Ordnance Vesting Act, and excepting also a tract of 200  
 " feet in breadth on each side of the said canal, the portion of the said  
 " land so excepted having been freely granted by the said Nicholas  
 " Sparks to the late Colonel By, of the Royal Engineers, for the purposes  
 10 " of the said canal, and excepting also a tract of 60 feet round the said  
 " basin and by-wash, wherever the present Ordnance boundary stones  
 " stand beyond that distance from the said basin or by-wash, but where  
 " they stand within that distance then they shall bound the tract so ex-  
 " cepted, which is freely granted by the said Nicholas Sparks to the said  
 " principal officers for the purposes of the said canal, provided no build-  
 " ings be erected thereon. And that, notwithstanding anything in the  
 " Act last cited- or in the Act of the said Legislature passed in the 2nd  
 " year of Her Majesty's reign, and intituled, 'An Act to limit the period  
 " for owners of land making claims for damages already occasioned by the  
 20 " construction of the Rideau Canal, and for other purposes therein men-  
 " tioned, or any judgment, decree, verdict or decision of or in any Court  
 " of law or equity, all the land to which the said proviso is applicable as  
 " aforesaid shall, if retained by the principal officers of Her Majesty's Ord-  
 " nance under the provisions of this Act, be paid for by them in the man-  
 " ner provided in this Act, and any parts thereof which shall not be so  
 " retained and paid for shall be and the same are hereby declared to be  
 " absolutely revested in the said Nicholas Sparks, or the parties respec-  
 " tively to whom the same may have been conveyed by him, before the  
 " 10th day of May, 1846, to his and their own proper uses forever, and  
 30 " such conveyances shall not then be invalidated by any want of posses-  
 " sion in the said Nicholas Sparks, or adverse possession by the said prin-  
 " cipal officers at the time they were respectively made.

" 16. And be it enacted, That the said principal officers shall, within  
 " one month after the passing of this Act, obtain a certificate from the offi-  
 " cer commanding Her Majesty's forces in this Province, setting forth  
 " what part or parts of the land to which the said proviso is applicable it  
 " is necessary to retain for the service of the Ordnance Department for  
 " military or canal purposes, and such part or parts shall be retained by  
 " and remain vested in the said principal officers in trust for Her Majesty,  
 40 " and the remainder, if any, shall be immediately thereafter absolutely  
 " revested in the said Nicholas Sparks, or the party or parties claiming  
 " under him to his and their own proper use for ever, any law to the  
 " contrary notwithstanding."

17. That the said proviso was in fact and effect an absolute indepen-

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dent enactment having full effect in itself, and the said Act (9 Vict., ch. 42) was in its provisions and purview and so thereby intended from its expressed objects, a legislative settlement of the difficulties between the said principal officers and the said Nicholas Sparks, of his land taken for Canal purposes, and without purporting to repeal or restrict the full force and general effect of the proviso as applying to all lands taken from private owners, at Bytown, for the use of the said Canal, and not used for that purpose, as in the terms of the proviso; and to the intent of the said compromise, by enlarging it to include the particular lands claimed by  
 10 Nicholas Sparks, and bringing them within the general scope of the proviso, in effect making a special addition to the general enactment without repugnance thereto, but leaving its full operative effect for all such lands at Bytown referred to in that enactment.

18. In pursuance of such lastly stated Act a considerable portion of the land taken from the said Nicholas Sparks, at Bytown, for the said Rideau Canal has since been restored to him; but no part of the land of the said Grace McQueen so set out and taken as aforesaid for Canal purposes, situate at Bytown, held by Her Majesty, but not used for such Canal purposes, to wit, 90 acres or thereabouts of the said 110 acres as  
 20 aforesaid has ever been restored to the aforesaid mentioned, the said Grace McQueen, nor to the said late William McQueen, nor to your said Suppliant.

19. By Act of the Provincial Parliament of Canada (19 & 20 Vict., c. 45), intitled, "An Act for transferring to one of Her Majesty's principal Secretaries of state the powers and estates and property therein described, now vested in the principal officers of the Ordnance, and for vesting other part of the Ordnance estates and property therein described in Her Majesty the Queen, for the benefit, use and purposes of this Province;" and thereby, after reciting the said "Ordnance Vesting Act," it  
 30 is, amongst other things, enacted as follows:—

20. "That immediately on and from the passing of this Act, all and  
 " every the lands and other real property in this Province comprised in  
 " the 2nd Schedule to this Act annexed, being a portion of the messuages,  
 " lands, tenements, estates and hereditaments comprised within the provisions and meaning of the said in part recited Act of the 7th year of  
 " the reign of Her Present Majesty, which, prior to the passing of this  
 " Act, were by the said recited Act, or otherwise, vested in the said principal officers of Her Majesty's Ordnance and their successors in the said  
 " office, and which have been used and occupied for the service of the  
 10 " Ordnance Department, or for military defense, by whatever mode of  
 " conveyance the same shall have been so purchased or taken, and all  
 " erections and buildings which now are, or which shall or may hereafter  
 " be erected and built thereon, together with the rights, members, ease-



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ments and appurtenants to the same respectively belonging, shall by virtue of this Act be and become and remain and continue absolutely vested in Her Majesty the Queen for the benefit, use and purposes of this Province, according to the respective nature and quality of the said lands and other real property, and shall be subject to the provisions of the Act passed by the Legislature of this Province in the 16th year of the reign of Her Present Majesty, intituled, an Act to amend the law for the sale and settlement of the public lands, and any further provisions which the Legislature of this Province may from time to time enact in respect thereof, and shall be held, used, conveyed and dealt with accordingly, but subject nevertheless to all sales, agreements, lease or leases, agreement or agreements for lease, already entered into with or by the principal officers of Ordnance, or by any other person or persons authorized or empowered by the said principal officers to exercise the powers and authorities of the said in part recited Act of the 7th year of the reign of Her Present Majesty, of or in respect of any such lands and other real property.

21. " Provided always and be it further enacted, that nothing herein contained shall be taken to affect the rights of any parties claiming any of the lands, buildings, or other property referred to in the next preceding section, and in the said second Schedule, and that all actions now pending against the said principal officers in relation thereto may be proceeded with to final judgment, in the name of the said principal officers, and as if the appointment of the said principal officers had not been revoked by Her Majesty, and it shall be lawful for Her Majesty's Attorney-General to appear in any such case on behalf of the Crown, and the Crown and all other persons whatsoever shall be bound by the final judgment of the Court in which such suit may have been commenced."

22. The second Schedule referred to in the said Act being the Schedule of military properties in Canada, proposed to be transferred to the Provincial Government, comprises amongst other properties the following :—

SITUATION.	APPROXIMATE QUANTITY OF LAND.	DESCRIPTION OF BUILDINGS OR MILITARY WORKS.
Rideau and Ottawa Canals.		City of Ottawa Barracks, Block Houses and Adjuncts of the Canals.

23. Several years after the death of the late William McQueen, your Suppliant, to wit, in 1869-70 caused to be presented to the

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Governor-General of Canada in Council a Memorial, the substance whereof only need be here referred to, urging upon the consideration of His Excellency and Council the facts and circumstances hereinbefore stated, "of  
 "the grant of the lots of land to Grace McQueen, of the construction of  
 "the Rideau Canal, and the setting off from the said grants of a portion  
 "of 110 acres for the purposes of the said canal, whereof 20 acres only  
 "had been used for the purpose, that the residue had been retained in  
 "the possession of the Government without payment, and without right  
 "or title, that the said unused land was revertible to the said Grace  
 10 "McQueen, from whom it had been taken, and now to her heir at law  
 "thereof, that it had never been vested in the Crown, and that your  
 "Suppliant was entitled as the heir at law of her father who died intestate, and was the heir at law of the said Grace McQueen, who also died  
 "intestate, to have the said unused land restored to and invested in her  
 "as the sole direct legal representative of the said Grace McQueen, the  
 "Grantee and owner of the said land and from whom it had been taken,  
 "and that your Suppliant was the owner of the said quantity of unused  
 "lands. Your Memorialist humbly praying for the restoration of the  
 "said land, to wit, the said 90 acres of land" Your Suppliant alleges  
 20 that although the statements contained in the said Memorial were true,  
 no part of the said land has since been restored to her.

24. The right of expropriation of private property for public use is of general acknowledgment, and derives from the ancient prerogative rights of Eminent Domain or compulsory powers of Government, which the Government retains over the estates of individuals to resume the same for public use whenever the public good requires its exercise. At the same time it belongs to the Legislature to determine what improvements are of sufficient importance to justify the exercise of the right, to regulate the mode and manner of the expropriation and to appropriate the public means of compensation and indemnity for the private  
 30 property taken and used by the Government. Without the aid of legislation to give effect to its exercise, the right in itself could have no avail, and therefore the exercise of the compulsory powers is controlled and, in fact, granted under legislative regulation, as these may prescribe, to prevent abuse and oppression. Chief among these regulations is the restriction imposed upon the power to take private property, only for a public use and within the actual necessity required therefor, because although the public good may require the exercise of competent powers to take private property, it is *ultra vires* to appropriate more than is necessary  
 40 for the purpose, and this is a general principle of all laws of such compulsory powers for the public good. When competent powers are necessary to be protected by legislative limits, the competent exercise of the power for the public good is provided, and the individual abstraction for that public object is at the same time protected within the legislative limits

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provided for the purpose, which would otherwise be a public infringement by the public power of the paramount right of the private property of the individual citizen. The expropriatory powers given by the Legislature being, therefore, in the nature of a grant, which, like all Government grants, passes nothing by implication and only what is necessary for the public work, upon the principle that the compulsory powers may devote private property to public use, but no law can justify its being taken for any other cause than the indicated public use, and within the actual extent of the requirement therefor. The legislative power is therefore a grant only of such property for a special public use, and within such limits as are necessary for the cause assigned in the expropriating law. The limitation imposed by the legislative grant upon the future exercise of the right of expropriation, is merely that no more lands should be appropriated beyond the necessary limits for the public purpose; in fact, that none should be authorized to be taken beyond the limits prohibited by the necessity.

25. The Rideau Canal Act of the Legislature which authorized the Government Agents to take the necessary lands to invest them in the public use, is restrictive and contemplates their use for the public purpose exclusively. Having determined that a public emergency existed requiring the taking of the lands necessary, and having in the exercise of the compulsory powers, and in consideration of the Statute undertaking to make the public work, granted the right to construct it, and provided the means for indemnifying the private owner for his lands surrendered or actually used for the public work, the Legislature have thereby exhausted their power in respect of the necessary lands applied and used, and cannot extend their grant beyond these and for other causes, and thereby derogate from the vested rights of property of the private owner.

30 26. The expropriatory principle above stated of the Common Law of England with reference to the exercise under that law of the right of Eminent Domain or compulsory powers of Government, prevails in the United States, and also in France, concurrently with the law of England, and in France it is held that:—

“L'exécution des travaux publics exige souvent la cession des propriétés privées. Les propriétaires ne peuvent se refuser à cette cession. Cette cession forcée constitue l'expropriation pour cause d'utilité publique.”

40 “L'utilité publique embrasse tout ce qui est nécessaire mais rien que ce nécessaire à l'existence des travaux ordonnés dans un intérêt général par l'administration; nul ne peut être privé de sa propriété, si ce n'est que lorsque la nécessité publique légalement constituée l'exige évidemment.”

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"ment, elle peut alors prendre toutes les terres et héritages nécessaires pour la construction publique, et non pas au delà."

Which may be translated as follows:—

"The execution of public works often requires the cession of private properties. Proprietors cannot refuse the cession. This compulsory cession constitutes expropriation for cause of public utility."

"Public utility embraces all that is necessary, but nothing but what is necessary for the existence of the public work ordered by the Administration in the general public interest. No person can be deprived of his property unless public necessity, legally constituted, evidently requires it; it may then take all lands and estates necessary for the public work, but not beyond the necessity."

27. The Rideau Canal Statute (8 George IV., ch. 1.) above mentioned, was the legislative complement of the right of Eminent Domain or compulsory powers above referred to, giving exercise to that right for the fixed purpose intended, the public purpose of constructing and completing the said canal, on the one hand by taking in surrender to His Majesty or appropriating and using for this canal so much of the private land so set out and ascertained as should be required in consequence of the intended canal and works being cut and constructed in and upon the set out land, or the part thereof used for the canal, and by providing a compensation for damages so caused to lands so cut and constructed upon by the canal, &c. The canal and its works were the only public purposes indicated, and the only lands that could be or were expropriated therefor were those so set out and actually used by and for the canal; the excess granted lots aforesaid, was not within the legislative grant, and not having been employed for the intended public purpose of the canal is not the property of the Government, because the Government does not acquire such lands like an individual, and only held them in temporary or precarious investment, conditioned to become absolute property upon their actual use for the public cause for which they were originally set out; and failing the cause for which they were so set out, the unused land by the mere fact of non-user became freed from all subjected tenure by the Government, and reverted to their dispossessed owner or her present heir at law. The unused land assumed for the canal purposes, but not used therefor, in fact set out and appropriated by the Government, was under the Canal Act vested in the Government for the proposed public use, depriving the owner of right and of the *dominium utile* of the land pending its possession for public use as Crown property, but which finally, from its non-user lapsed from its intended cause, leaving the unused lands free from Crown possession, and also from any legal conversion



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from its original quality of realty as when first set out or ascertained for the canal purposes. The public destination of the 20 acres taken and used was completed by their actual use for the canal purpose, and thereby became Crown and public property with the works constructed upon them, and therefore were legally converted from realty into personality, represented by the indemnity payable therefor. But neither public destination nor public use affected the 90 acres which were in the possession of the Crown so as above vested, and remained unconverted from their original quality of realty, and like a lapsed devise of real estate, reverts by both  
 10 law and equity in full property and possession to the Heir at Law of the Devisor, its proper owner. The possibility of the use of the 90 acres to their destined public purpose not being accomplished, and the condition therefor having lapsed, any right proceeding from their having been set out and ascertained, or any Crown divestment or possession having failed by reason of their non-user for canal purposes, the unused 90 acres, having been taken or acquired by no other title than the Rideau Canal Act, the Crown's property in them lapsed, but they are withheld from their owner without any right whatsoever, contrary to the principle  
 20 of the common law above mentioned for the expropriation of private property for public works, but not otherwise, and expressly in opposition to the proviso in the Ordinance Vesting Act above referred to, the 7th Vic., ch. 11, of Canada, namely, "Provided always that all lands taken from private owners at Bytown under the authority of the Rideau Canal Act, which have not been used for that purpose, be restored to the party or parties from whom the same were taken." The said proviso being merely in affirmance of the common law, and in no way interfered with by the explanatory Act (9 Vict., ch. 42) above referred to.

28. Under the circumstances before stated, your Suppliant is now the only person interested in, and as such is entitled to have restored to  
 30 her and to be invested in such part of the said tracts or parcels of land comprised in the said two several before stated deeds of grant respectively as aforesaid, as was formerly taken for the use of the Rideau Canal, but not used for that purpose. The quantity of land so taken was 110 acres or thereabouts, whereof the actual quantity of such land as was actually used for the purpose of the said Canal does not exceed 20 acres or thereabouts leaving 90 acres or thereabouts unused from the purposes of the said Canal; however, your Suppliant has never hitherto been able to obtain the restoration of any part of the said land, notwithstanding the before stated memorial application for that purpose.

40 29. Your Suppliant alleges that the said 90 acres not so used for the purposes of the said Canal, which passed to or became by the Act vested in Her Majesty therefor, by lapse have passed to and are now vested in your Suppliant, as if the said canal had never been made and the said Acts had

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never been passed, yet Her Majesty's Government in Canada have all along since the construction of the said canal taken and held possession of the said 90 acres, and still hold possession thereof, and have taken the rents and profits thereof, and they have also sold parts thereof and made conveyances thereof to purchasers thereof, and given possession to such purchasers and have received the purchase money thereof; and your Suppliant submits that Her Majesty should deliver possession to your Suppliant of the said land remaining unsold, and should pay to your Suppliant the rents and profits of the lands unsold; and as to the portions of the said lands 10 so sold should pay the present value thereof, and your Suppliant in addition to the foregoing submits that she should have a reconveyance of all such lands as have not been sold as aforesaid.

30. Under and by virtue of an Act of the Parliament of the United Kingdom of Great Britain and Ireland known as "the British North America Act, 1867," the said lands and hereditaments were transferred to the Dominion of Canada, or purported to be conveyed to the said Dominion of Canada.

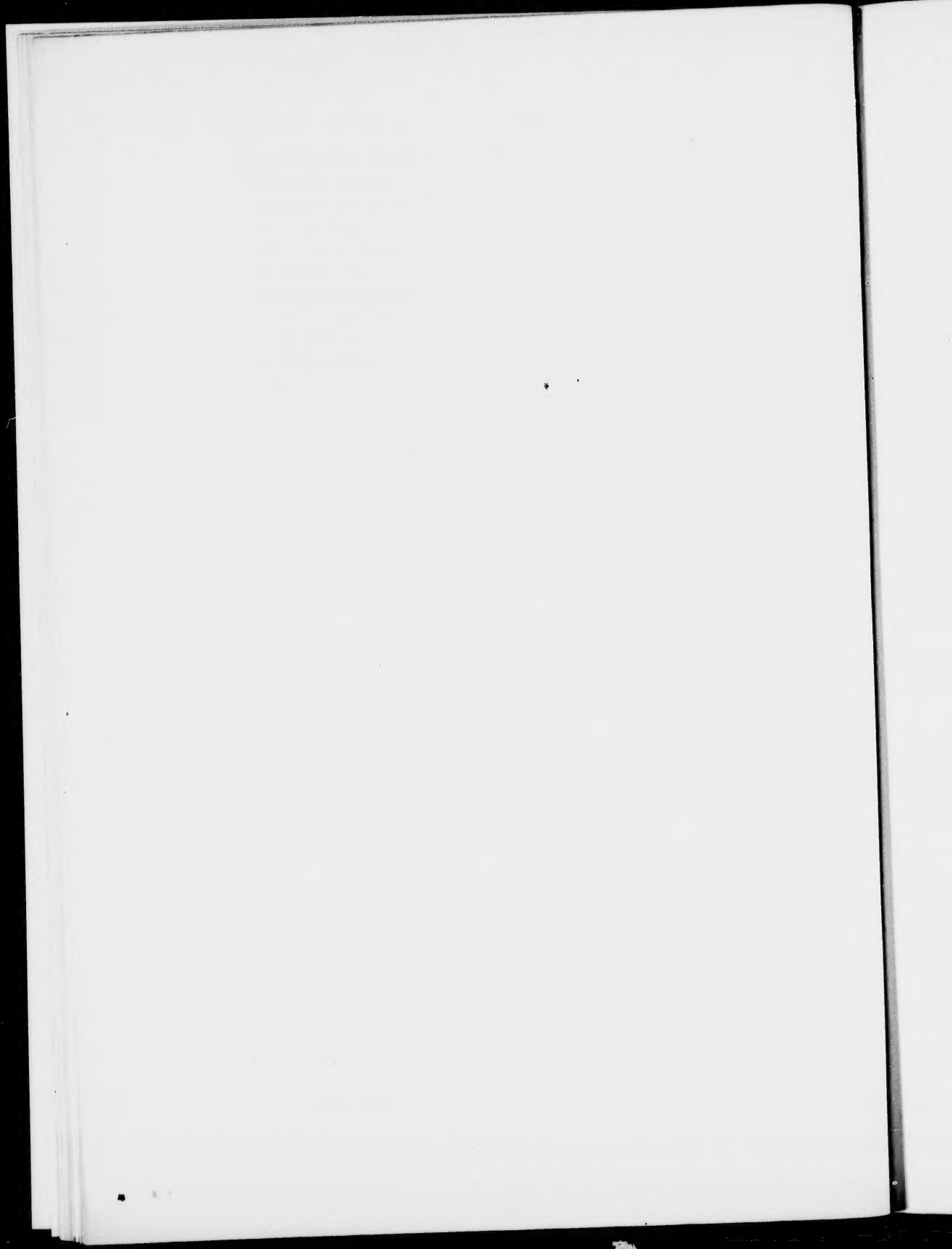
31. In any case Her Majesty was and is a trustee for your Suppliant of all of the said lands that were not actually used for the purposes of the 20 said canal, and it should be so declared.

32. Your Suppliant therefore humbly prays that all such parts of the said two several parcels or tracts of land comprised in the said two several hereinbefore stated deeds of grant dated respectively the 20th day of May and the 10th day of June, 1801, as aforesaid, as were supposed to be taken for the use of the said Rideau Canal, but not used for that purpose, may be restored to, and be revested in your Suppliant, according to her right and interest to and in the same; and that possession thereof may be delivered to your Suppliant; and that an account of the rents and profits thereof may be taken, and, together with the costs of this petition, be paid to your Suppliant; and as to such portions thereof as have been sold, that the values thereof may be paid to your Suppliant, and also the rents and profits thereof prior to the selling thereof by Her Majesty, as aforesaid, and for the purposes aforesaid, that all necessary orders and decrees may be made and accounts taken.

Dated the 1st day of February, A.D. 1879.

  
Counsel for Suppliants

LUCY McQUEEN,  
Suppliant.  
J. J. C. ABBOTT,  
Counsel for Suppliants.





*Miss Lucy McQueen  
64 Bern Street*

In the Exchequer Court of Canada. *Montreal*

# Petition of Right

OF

LUCY MCQUEEN,

J. J. C. ABBOTT,  
*Montreal, Quebec.*

HART & SON, Printers & Publishers, 464 Notre Dame St., Montreal.

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